MCI believes it would be bad public policy to permit consumers to pay nothing for services provided by an unauthorized carrier. (Notice at ¶27) Such a policy would open the door to wholesale fraud just as competition is getting underway and should be rejected outright. Furthermore, giving consumers the additional remedy of recovering damages in excess of what they may have "overpaid" due to the unauthorized switch, may be contrary to §258 which provides for carrier-to-carrier liability.[21] However, it is important that unauthorized carriers not be permitted to keep any monies obtained as a result of providing service to a consumer through an unauthorized PC change.[22] In no instance should a bad actor be rewarded for its bad acts. The revenues collected should be split between the authorized carrier (at the rate the consumer would have paid had the calls been carried by their carrier of choice) with the remainder returned to the consumer. This is another instance where a third-party administrator would likely ease the administrative process of making all injured parties whole.

A system which permits consumers to withhold all payment from any carrier as suggested by the National Association of Attorney's General (NAAG), though well intentioned, could lead to a significant increase in the number of claimed unauthorized conversions as noted *supra*. MCI's experience has shown that a majority of the changes that are challenged as unauthorized

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[21]Limiting damages to carriers keeps consumers out of the middle. The Act did not intend to create an adversarial relationship between carriers and customers by permitting or encouraging litigation for recovery of damages in excess of overpayment. This position is consistent with the no-fault system discussed *infra*.

[22]Rule §64.1170(a) which proposes to give the victimized carrier just ten days to request information from the unauthorized carrier seems unworkable. The authorized carrier may not even know what to ask for let alone be able to do it within ten days in light of the large number of switches per year. A mechanism for obtaining the relevant information over a longer period of time is required.

stem instead primarily from communications break-downs within a household, consumers forgetting that they authorized a change or buyers remorse. In each of these cases, there is no unauthorized switch, but it could be wrongly treated as one. Unfortunately, just as there are companies in the marketplace that search out and abuse loopholes in the rules with regard to PC changes, we can expect some consumers to do the same.

In the event the Commission decides to permit subscribers to withhold all payment for charges assessed by unauthorized carriers, the issue of what limits should apply is critical. (Notice at ¶27) MCI believes the ability to withhold payment should be limited to the period between the switch and receipt of the first bill reflecting the switch. While MCI maintains that such a policy would essentially make consumers more than whole -- a troubling precedent -- the consumer has some responsibility once they have received reasonable notice of the switch.

MCI believes it would aid enforcement of these rules if companies were liable to one another for unauthorized conversions as suggested by the Commission. (Notice at ¶28) Indeed, if the Commission wants to encourage greater private enforcement, inclusion of court costs and attorney's fees as recoverable damages could help as well. However, this policy would not come without some risk. There needs to be a clear delineation between PC change disputes and actual unauthorized conversions.[23] With the tens of millions of PC changes each year, inadvertent errors will occur. While the Commission and well intentioned companies have an interest in taking steps to prevent sloppy PC changes, a distinction should be made between damages

[23]This is a distinction lost on Ameritech, for instance, which has recently blurred the lines in the press associated with its inaccurate and misleading complaint recently filed at the Commission against IXCs. See, Answer of MCI Telecommunications Corporation, File No. E-97-42, September 15, 1997.

appropriate for intentionally misleading or malicious unauthorized conversions and those that are accidental in nature.

With respect to identifying and punishing unauthorized PC changes, the reliable evidence should include TPV. MCI's experience with TPV indicates that when done conscientiously, it is the most effective means of preventing unauthorized conversions. If the Commission is unwilling at this time to mandate TPV for all carriers, it should encourage the use of TPV by ruling that any sale verified using TPV should be presumed valid and subject to more limited damages. This policy would also have the additional effect of reducing disputes among carriers. This will be the case even if the Commission decides to transition to an independent third-party administrator. Furthermore, such a policy is consistent with the current "no-fault" system which automatically switches a customer back to his or her carrier of choice once a dispute is raised.

In association with policies to encourage increased use of TPV, it would be useful for the Commission to establish what standards are necessary to demonstrate that the TPV provider is truly independent. While MCI is not opposed to negotiating additional industry standards as deemed appropriate, at minimum TPV standards should include 1) independent ownership; 2) physical separation; 3) no financial incentives -- either for the TPV entity or the TPV representatives -- to approve sales. These represent some effective industry standards to guard against improper use of TPV generally or the use of TPV as a shield against increased liability for bad behavior.

B. No Fault PC Changes Must Be Preserved

The no-fault system for disputed PC changes is critical to making the competitive market for telecommunications services operate smoothly. No changes should be made which upsets or limits this policy. Indeed, it should be specifically extended to all telecommunications services.

In the early 1990's, when the no fault system was adopted, disputes between carriers dropped dramatically, investigation and dispute handling costs were eliminated and carriers had no incentive to dispute a customer's claim that they were switched without the customers authorization. For consumers, who are immediately switched back without challenge, this system has worked especially well. Any change which leads to a more elaborate carrier-to-carrier dispute mechanism will leave consumers as the big losers. Consumers will lose the hassle-free switch-back they enjoy today and it could lead to an increase in disputes between carriers and customers.

While third-party PC administration may eventually be able to help with this and many related issues (see discussion *infra.*), it is not yet reality. MCI believes the Commission should retain dispute resolution procedures which maintain the essence of no-fault PC handling, allow maximum flexibility to deal with large numbers of carrier-to-carrier complaints and establish the principle that a sale that has been verified via TPV is presumed valid and not subject to carrier-to-carrier claims.

C. Liability of Carrier to Subscribers

A consumer that is the victim of an unauthorized PC conversion should certainly receive a refund for all charges paid to the unauthorized carrier in excess of what they would have paid using their carrier of choice for the same calls. At the same time, the authorized carrier is entitled to the revenues lost as a result of the unauthorized conversion. In response to the question of how the consumer and carriers are made whole (Notice at ¶29), MCI believes the Commission should require the unauthorized company to remit all revenues collected from the victimized customer to the authorized carrier along with a list of calls made including time of day and location. The authorized carrier can then retain the revenues they would have otherwise earned while returning any overpayment to the customer. The authorized carrier will be in the best position to figure out exactly what the customer would have paid for the service had the unauthorized switch not occurred.

Such an approach will also help deal with the problems associated with premiums that the customer may have lost as a result of the unauthorized conversion. (Notice at ¶30) If the authorized carrier is fully compensated for lost revenues, that carrier should be required to make the consumer whole by awarding any premiums that were lost as a direct result of the unauthorized PC change. However, if the consumer's carrier of choice is not compensated for the lost revenues, it should not be required to compensate the consumer for lost premiums. To require the carrier to do so would increase the harm of the one innocent victim -- the authorized carrier -- at the expense of the other victim -- the consumer. This would be inequitable. This approach would have the additional benefit of eliminating any problems associated with

confidentiality of premium programs with particular customers that would result if the two carriers were required to negotiate the issue of lost premiums directly.[24]

The Commission proposes application of a "but for" test to determine liability for submitting and executing carriers when a dispute concerning a PC change request arises. (Notice at ¶34) MCI finds the three part test a good start, but believes guidance from the Commission as to an appropriate time frame for "timely" execution of a PC change is necessary as well. MCI believes the Commission's rules should require that these changes be made as soon as possible after notification to the executing carrier and in no case longer than three days. Because of the dependence of all parties on the good faith of the executing carrier, there must be stiff penalties for failure to execute a timely PC change. Any delay beyond this period is, in effect, an unauthorized conversion and should be treated as such. There must be significant penalties for failure to execute a switch in a timely manner. MCI believes carriers and customers for whom PC changes are not executed promptly should have the right to petition the Commission for a finding of a pattern of abuse or anti-competitive conduct punishable by significant fines paid to the Commission and damages paid to the injured carriers.[25]

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[24]The proposal by the Commission in ¶31 regarding dispute resolution between the carriers would also be workable with a third party administrator in place. The third party administrator could include a negotiation/resolution function for the industry without impacting the victimized consumer who could be switched to the carrier of choice under the no-fault system.

[25]As the Commission notes (Notice at ¶35), these questions of liability illustrate yet another example of how an independent third party administrator may provide a valuable, workable solution for many of the anti-competitive problems that may be encountered. However, even with a third party administrator, the potential problems and abuses will not go away until vigorous competition exists in the local market and the executing carrier is not exclusively the incumbent LEC.

V. THE ROLE OF A THIRD-PARTY PC ADMINISTRATOR

By now, we should have all learned that it is unacceptable to allow the fox to guard the hen house. In a competitive telecommunications market, allowing the incumbent LEC to administer the PC process is intolerable. In light of MCI's experience trying to open local markets to date, it is clear the incumbent LECs will use whatever means possible to get an advantage in the marketplace. The Commission must establish a third-party which would be responsible for many of the critical roles currently handled by the incumbent LECs and, in some cases, the Commission.

An independent third-party could be responsible for some or all of the following:

- PC administration and PC processing, including order processing, in which the third party entity would receive electronic feeds from carriers and process the vast majority of switch activities so that underlying LECs would not have direct contact with or access to customer specific information;

- management of PC freeze, PC restrict, and other similar carrier freeze customer elections, and management of the process of releasing those customer protective measures, so that existing anti-competitive LEC management of these measures can be stopped;

- control of carrier access to customer LD, intraLATA and local carrier selection information, PC freeze information, BNA, etc., including the ability to provide all necessary information to other carriers on a non-discriminatory basis;

- conflict resolution, serving as an essential component for implementing the carrier to carrier liability provisions;

- non-discriminatory provision of information necessary to permit more effective billing of casual services, in the event that LECs are not held to the obligation to bill and collection for casual services;

• any other aspects that might benefit from a neutral administration approach.

Once the functions of the third-party administrator are identified, an RFP process could be initiated to help flesh out the important operational details and challenges. This might be an appropriate use of an industry consortium under the guide of the Commission.

VI. RESELLERS

The Commission asks for comment on the issues related to disclosure and subscriber notification requirements for resale carriers upon changing their underlying carrier contained in a petition filed by the Telecommunications Resellers Association (TRA).[26] (Notice at ¶36-40) MCI supports the tentative conclusions reached by the Commission proposing to tie disclosure requirements to reliance of subscribers on statements by the resale carrier. However, regardless of the test for subscriber reliance ultimately adopted, the Commission should also make clear that in no instance is the underlying carrier that provides network facilities to the reseller responsible for such notification or disclosure. Furthermore, the rules must protect against the underlying carrier being wrongly held responsible for unauthorized conversion of the reseller carriers' customers.

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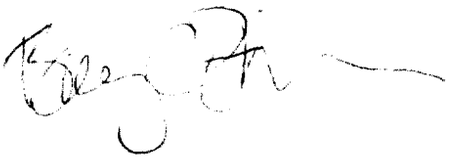
[26]TRA Petition for Clarification of File No. ENF-94-05 (filed Dec. 11, 1995).

VII. CONCLUSION

WHEREFORE, MCI respectfully urges the Commission to adopt rules in this proceeding consistent with these comments.

Respectfully submitted,



Bradley C. Stillman
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Its Attorney

September 15, 1997

ATTACHMENT 1

MCI Communications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2375

Kimberly M. Kirby
Senior Manager
FCC Affairs

August 5, 1997

Regina Keeney
Chief of the Common Carrier Bureau
Federal Communications Committee
1919 M Street, NW
Washington DC 20554

Dear Gina:

You may have seen in the press denials by incumbent local phone companies that they are engaging in anticompetitive behavior in local markets. For example, BellSouth recently denied sending retention letters to its customers. Attached, for your information, are facts which demonstrate that BellSouth has sent such "retention" letters, a practice only made possible by BellSouth's access to customer information and monopoly market power.

As always, you may contact me to discuss any of these issues.

Sincerely,

Kimberly M. Kirby

Attachments

cc: Richard Metzger (CCB)
Carol Mattey (CCB)
Tom Boasberg (Office of Chairman Hundt)
Jim Casserly (Office of Commissioner Ness)
Kathy Franco (Office of Commissioner Chong)
Paul Gallant (Office of Commissioner Quello)
John Nakahata (OGC)
Jordan Goldstein (CCB)

MCI Telecommunications Corporation

1801 Pennsylvania Avenue, NW
Washington, DC 20006

BellSouth Masks Retention Efforts

- BellSouth denies sending "retention letters" to customers requesting to switch to MCI local service. According to *Comm Daily*, BellSouth says its letter "doesn't seek to block action, but simply notifies [consumers] that a change is being made." *Communications Daily*, July 16, 1997.

- In fact, the letter BellSouth sends to such customers states "[Y]ou will shortly receive your final bill as confirmation. . . . If you have elected to leave BellSouth, we'd like you to consider coming back. . . . If you would like to resume BellSouth service or if you would like to hear more about what we have to offer, please call... ." (Attached)

- Further, BellSouth's interconnection agreements clearly state that "BellSouth shall not use MCIm's request for subscriber information, order submission, or any other aspect of MCIm's processes or services to aid BellSouth's marketing or sales efforts"

The Truth :

- Any attempts to "win-back" a customer should occur in a separate communication after confirmation that service switch has occurred and only using non-proprietary information.

- Bell South's letter is clearly an attempt to change the new MCI customer's mind prior to confirming the customer's change.

- BellSouth is violating a contract clause by using information requested by MCI for service switches to target potential retention customers.

- Such masked retention efforts prior to finalized service switch does not allow MCI to fairly compete for customer business.

Background :

- June 25, 1997: BellSouth receives customer's request to switch local service to MCI and schedules service change completion for July 7, 1997.

- July 2, 1997: BellSouth sends letter to customer attempting to retain business prior to any confirmation to MCI customer that switch is completed.

- July 16, 1997: In response to criticism from MCI, BellSouth's spokesperson describes letter as a notification rather than an attempt to block switch. Argues that MCI's characterization of letter as retention effort is an attempt to block BellSouth's entrance into the long distance market.

- BellSouth contract with MCI states: "BellSouth shall not use MCIm's request for subscriber information, order submission, or any other aspect of MCIm's processes or services to aid BellSouth's marketing or sales efforts." Attachment VIII, Section 1.1.1.3

BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202 3170

July 2, 1997
(404)257-5557

[redacted]

Dear Customer:

We recently received your request to switch your local phone service to another carrier. Although we are disappointed to lose you as a customer, be assured that we have already handled your request and you will shortly receive your final bill as confirmation.

If you were unaware that we received a request to switch your service, please notify us of the problem so that we can correct it. Call us any day, at any time, at 1-800-733-3285.

If you have elected to leave BellSouth, we'd like you to consider coming back. Please know that w are committed to providing the most advanced technology, the highest level of service and the best value for all of your communications needs. If you would like to resume BellSouth Service, or if you would like to hear more about what we have to offer, please call 1-800-733-3285.

We value you as a customer and look forward to serving you again in the near future.

Sincerely,

Bob Daniel
Vice President & General Manager
Consumers Services - Georgia